

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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APPEAL 21A-UI-22679-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REQUEST TO REOPEN AND APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

(1) Make a request to reopen the hearing to the Appeals Bureau directly to:

**Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
or
Fax (515)478-3528**

(2) **OR YOU MAY** Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
or
Fax (515)281-7191**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-benefits-handbook-guide-unemployment-insurance-benefits>

Handbook for Employers and forms: <https://www.iowaworkforcedevelopment.gov/employerforms>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MINDE J COLEMAN

Claimant

**CENTERS AGAINST ABUSE
& SEXUAL ASSAULT**

Employer

APPEAL 21A-UI-22679-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/29/21

Claimant: Appellant (2)

Iowa Code § 96.2(A) - Discharge for Misconduct
Iowa Code § 96.5(1) - Voluntary Quit
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-26.15(5) - Exhibits
Iowa Admin. Code r. 871-24.32(8) - Current Act

STATEMENT OF THE CASE:

Claimant/appellant, Minde Coleman, appealed the October 7, 2021, (reference 01) unemployment insurance decision that denied unemployment insurance benefits due to an August 20, 2021 discharge for violation of a known company rule. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for December 14, 2021. The claimant participated, with counsel, Kellie Paschke. The employer, Centers Against Abuse & Sexual Assault (CAASA), participated through counsel, Blake Miller, Stephanie Henrich, interim executive director, and Christine Orenday. Claimant's Exhibits 1-7, and Employer's Exhibits A-H were admitted without objection. Judicial notice was taken of the administrative file and the records contained therein. At the end of the hearing, Employer's motion to keep the record open to allow them to prepare and submit an Exhibit I was objected to and the objection was sustained. See Iowa Admin. Code r. 871-26.15(5) which requires:

"Proposed exhibits must be sent to the appeals bureau and to the other party or parties to the proceeding before the hearing date by mail, fax, email or hand-delivery."

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed part-time, originally as an advocate and later the sexual abuse volunteer and training coordinator. Exhibit A. She started work June 10, 2003. Her last day worked was June 16, 2021, as she started a leave of absence on June 17, 2021. Claimant was discharged

from work on August 20, 2021 for the sole reason of not keeping her certification current (Exhibit F) as required for her job, as set forth in her job description (Exhibit C, pages 75-77). Claimant's certification expired in June 2016. Exhibits D and E.

Employer has an employee handbook (Exhibit C), which claimant received. Claimant was not disciplined or warned about her certification while working for employer. Claimant did not believe her job was in jeopardy. Claimant allowed her certification to lapse because three consecutive Executive Directors (Jacquie Kehoe, Matt Horrihan, and Bobi Miller), CAASA Board of Directors and the Iowa CAASA instructed that she did not need to keep her certificate current in the position she held. Exhibit 2 and Claimant's testimony.

On August 19, 2021, Kelsi Roby informs CAASA Interim Executive Director Stephanie Henrich that claimant should have kept her certification active. A CAASA board meeting was held on August 19, 2021, and a decision made to terminate claimant. Claimant is advised of her termination on August 20, 2021.

There were a number of CAASA employees who failed to get timely certified/keep their certifications, but claimant was the only one terminated. One person remains employed, performing duties that requires certification, without certification, without explanation.

While August 19, 2021 may be the first that Interim Executive Director Henrich and the members of the CAASA board became aware that claimant's certificate had lapsed since June 2016, the employer had knowledge of this lapse since at least June of 2016, if not earlier, given the knowledge of prior CAASA boards and three executive directors.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard

of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

To the extent that the circumstances surrounding each accident were not similar enough to establish a pattern of misbehavior, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a);

Greenwell v. Emp't Appeal Bd., No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer has failed to prove they had previously warned claimant about any issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Employer has failed to meet their burden in proving: claimant was not warned of her conduct and therefore was not aware her job was in jeopardy, therefore no misconduct. The act for which claimant was terminated for, not keeping her certification current, happened in June of 2016, resulting in no current act proven, as she had gone over five years without being certified and without being discharged for that reason.

While the employer may have had good reasons to let claimant go, there was no disqualify reason proven and no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The October 7, 2021, (reference 01) unemployment insurance decision denying benefits is **REVERSED**. Claimant was discharged from employment on for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

January 24, 2022
Decision Dated and Mailed

dh/mh